IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1325 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

QURESHI AHMEDMIYA ALIMIYA

Versus

HEIR AND L.R. OF DECD.QURESHI MIYABHAI PIRBHAI

Appearance:

1. Civil Revision Application No. 1325 of 1997

MR VC DESAI for Petitioner No. 1

MR MG NAGARKAR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/03/2004

ORAL JUDGEMENT

The petitioner is the original defendant of Regular Civil Suit No.7/1996, which is filed by the present respondent in the Court of learned Civil Judge

(J.D.) at Bajana. The plaintiff has filed the said suit for declaration and injunction. In the said suit, the plaintiff gave an application Exh.5 for interim injunction restraining the defendant from carrying out any construction in the suit property. The trial Court after considering the documentary evidence on record came to the conclusion that the plaintiff is not entitled to injunction as prayed for and accordingly by the impugned order dated 31st December, 1996, the trial Court rejected the said application for interim injunction. The respondent carried forward the matter further by way of filing Misc.Civil Appeal No.3/1997 before the appellate Court. The appellate Court allowed the said appeal and accordingly injunction as prayed for is granted in favour of the original plaintiff. It is the said order, which is impugned in the present Civil Revision Application.

2) It is required to be noted that the present revision application is filed at an interlocutory stage, in a pending suit, as it is filed against an interim order, and in view of the amendment in Section 115 of C.P.C., this revision is not maintainable. Mr.Desai for the petitioner, however, submitted that considering the fact that the suit is of 1996 and by injunction the present petitioner is prevented from making any construction on the northern side of the suit land and, therefore, the suit is required to be decided at the earliest, so that the present petitioner is not required to suffer monetarily as he is prevented from carrying out construction in the disputed strip of land. Mr.Desai, therefore, submitted that direction is required to be given to the learned trial Judge to decide the suit expeditiously. Considering the fact that the dispute is between two near relatives, as well as considering the fact that by injunction defendant-present petitioner is restrained from making any construction in the suit land, it would be in the interest of justice if the suit is ordered to be decided expeditiously.

3) The learned Civil Judge (J.D.) Bajana is directed to dispose of the pending civil Suit as expeditiously as possible and latest by 31st December, 2004. Writ to be sent to the trial Court forthwith for compliance. Writ be sent latest by 25th March, 2004 so that the trial Court can take up the matter for hearing and dispose of the same within the stipulated time. It is clarified that the trial Court may decide the suit on its own merits, without being influenced by the observations made by the trial Court as well as the appellate Court while deciding Exh.5 application.

4) Subject to what is stated above, this Civil Revision Application is rejected, as the same is not maintainable in view of the amendment in Section 115 of C.P.C. Rule is discharged. No order as to costs.

(P.B.Majmudar,J.)

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